

CIVIL REVISION APPLICATION NO.1343 OF 1981

Date of Decision: July 27, 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE S.D.DAVE

1. Whether Reporters of Local Papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order mad..
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. V.J. Desai, learned Counsel for the petitioner
Mr. D.R. Dhimar, learned Counsel for the opponent.

Coram : S.D. Dave, J.

July 27, 1995

ORAL JUDGMENT:

This is a Civil Revision Application, for and on behalf of the defendant-tenant.

The original plaintiff-landlord, Kalidas Shah had instituted R.C.S.No.187 of 1978, before the learned Civil Judge, JD, at Vyara, against the petitioner-tenant, for a decree of eviction, on the ground of non-payment of rent

for a period of more than six months, and on a further ground that the suit premises were not utilised for the purpose for which they were let, for a continuous period of six months, immediately, before the filing of the suit, without a reasonable cause. The suit came to be dismissed by the trial Court, vide judgment dated February 20, 1980. The matter was carried in appeal, before the District Court, at Surat, by filing Regular Civil Appeal No. 73 of 1980. This appeal came to be heard and decided by the learned Extra Assistant Judge, Surat, vide judgment dated April 23, 1981. The appellate Court has taken a view that, the plaintiff-landlord was able to establish that the suit premises were not utilised for the purpose for which they were let, for the statutory period and that, there was not a reasonable cause. The said appellate judgment and the decree are in challenge in the present Civil Revision Application, before me.

Learned Counsel Mr. V.J. Desai, who appears on behalf of the petitioner urges that the appellate Court was at an error in reversing the judgment and the decree of the trial Court, under which, the suit of the plaintiff-landlord, came to be dismissed. The learned Counsel urges that, there is, absolutely, no evidence to warrant a conclusion that, the suit premises were kept closed for the statutory period, without a reasonable cause. The learned Counsel urges with vehemence that, if the mother of the petitioner-tenant was not keeping well and if she was required to be taken to Bombay for some treatment and if during that period, the suit premises could not be utilised, it does not give a ground for eviction to the plaintiff-landlord. Learned Counsel Mr. Dhimar, appearing on behalf of the respondent urges that the reasoning adopted by the appellate Court and the final conclusion arrived at are in consonance with the evidence and the legal position, in this respect.

It requires to be appreciated, as has been done by the appellate Court that, in the reply to the notice Exh. 26, dated August 8, 1978, the defendant had stated that the premises were kept closed because of the sickness of his mother, who was required to be shifted to Bombay for the medical treatment. This is on the point of the reasonableness or otherwise as the cause for keeping the premises closed for the statutory period. But, when the matter had gone to the trial Court, the defendant-tenant, instead of saying that the premises were required to be closed because of the sickness of his mother, had taken a somersault and said that the suit premises were never kept closed. Thus, it appears, very

clearly, that the tenant had failed to establish the reasonableness of the cause for keeping the premises closed. He, definitely, had tried to advance a valid cause in the reply to the notice at Exh. 26, but later on, when the matter came up for evidence, he had given up the stand and had, on the contrary, said before the Court below that, the suit premises were not kept closed. It is, therefore, apparently clear that, the trial Court was at an error in dismissing the suit. It is equally clear that, the above said reasoning could not have been found favour with the appellate Court, therefore, the appellate Court was, perfectly justified in coming to the conclusion that the suit premises were kept closed for the statutory period, without any reasonable cause.

The factum that the suit premises were kept closed for a pretty long time, between April 1978 and May 1979, must be accepted as duly proved because, the Clerk of the Gujarat Electricity Board, who came to be examined, has said, by getting support from the Ledger at Exh.34 that, there was, absolutely, no consumption of electricity, during this period. The tenant could have to explain away the situation, by putting up a case that the electric meter was not working, during the above said period. He has never said so. But the Trial Court, of its own has, advanced such a case never pleaded in the pleadings and never proved during the trial. The Appellate Court, therefore, was perfectly justified in not countenancing such a "suggestion" coming from the Trial Court.

Thus, it appears that the appellate Court was, perfectly justified in reversing the judgment and the decree of the trial Court and decreeing the suit of the plaintiff, on the above said count. The present Civil Revision Application, therefore, fails and the same is hereby dismissed. The Rule shall stand discharged. The interim relief shall stand vacated. There shall be no order as to costs, on the facts and in the circumstances of the case.
